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August 12, 2022

By ECF

Hon. James M. Wicks
United States District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Josiah Galloway v. Nassau County et al., Docket No. 19-CV-5026 (AMD) (JMW)
Our File No. 12473.00047

Dear Judge Wicks:

Wilson Elser represents the County Defendants in the above-referenced action. We are writing to request leave of court to complete expert depositions by August 30, 2022, rather than by August 19, 2022, the present deadline. With plaintiff's consent, but subject to your approval, we have tentatively scheduled all remaining depositions as outlined below. The reason for the need for additional time is that despite the cooperative efforts by the parties to conduct the remaining depositions, we were unable to find a workable schedule within your guidelines. The experts' prior commitments and summer plans complicated the process. In addition, one of the lead attorneys on this case, Lalit Loomba, left our firm on June 30, 2022 and it took us several weeks to compensate for his departure. The Village of Hempstead Defendants join in this request.

If, with your permission, we complete the last expert deposition on August 30, 2022, we also request that the date for taking the first step in summary judgment practice be extended from September 2, 2022 to September 30, 2022. Both the Hempstead Defendants and the County Defendants intend to move for summary judgment. We believe that the requested time is the minimum time necessary for the parties to receive the expert deposition transcripts, comply with any post deposition discovery demands and exchange Rule 56.1 statements. We have met and conferred with counsel for the parties. The attorneys for the Village of Hempstead consent to this request for an extension. The attorneys for plaintiff oppose this request. There has been one prior request to extend the expert discovery deadline. On June 17, 2022, a request was made for a three-week extension which was granted by the Court on June 20, 2022.

In addition to the reasons above supporting a request for court approval to extend the expert deposition schedule, we note that after prior defense counsel for the County was disqualified by the Court, Wilson Elser was substituted as counsel for the County Defendants in late April of

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2022. Prior counsel conducted much of the fact discovery in this case. A status conference was held on April 22, 2022 where the Court issued a new discovery schedule (D.E. 157). On April 28, 2022, we received prior counsel's file on this case. This file includes over twenty-five (25) deposition transcripts, thousands of pages of criminal trial and suppression hearing testimony, over ten-thousand pages of written discovery and hundreds of audio files. We met the June 3, 2022 fact discovery deadline set by the Court, with the Court permitting two (2) depositions to take place shortly after the fact discovery deadline.

Completion of expert discovery is taking more time than anticipated. As this Court is aware, counsel for plaintiff herein also represents a plaintiff in a separate action, *Jackson v. County of Nassau*, 18-CV-3007 (JS)(AYS). Counsel for the County defendants also represents Nassau County in the *Jackson* case. In both cases, there was a dispute over whether defendant's expert psychologist would be permitted to conduct an in-person psychological evaluation. In *Jackson*, motion practice was necessary. Since that motion was pending in *Jackson*, the defendants in *Galloway* did not file a similar application thinking that this Court would be interested in learning the outcome in *Jackson* before ruling on the same issue here. On June 27, 2022, a decision was issued in *Jackson* that provided guidance with respect to the in-person v. remote dispute permitting defendants' to conduct an in person evaluation. See 18-CV-3007, at DE 363. All counsel agreed to follow the same parameters in *Galloway*. On July 13, 2022, Dr. Bruce Frumkin, Ph.D completed an in-person evaluation of plaintiff in the *Galloway* case, with the parties abiding by the parameters in the *Jackson* decision. On July 22, 2022, Defendants met the Court's deadline and served plaintiff with Rule 26 disclosures rebutting plaintiff's four (4) expert Rule 26 reports.

The parties would like to depose all but one of the proposed experts. The parties are, for the most part, calling the same witnesses in both cases. We have finally been able to schedule eleven (11) expert depositions in both cases. Due to scheduling conflicts, it was impossible to schedule all the expert depositions prior to the scheduled August 19, 2022 deadline. However, we have been able to work out the schedule listed below on consent of all parties.

On *Galloway*, plaintiff's counsel has identified the following experts: 1) Dr. Jennifer Dysart – eyewitness identification expert; 2) Jeffrey Noble – police practices expert; 3) Dr. Michael Fraser – forensic psychologist expert; and 4) Dr. Kristin Kucsma – economist expert. Defendants have identified the following rebuttal experts: 1) Dr. Bruce Frumkin – forensic psychologist expert; and 2) John Monaghan – police practices/eyewitness identification expert. On August 8, 2022, plaintiff's counsel deposed Dr. Frumkin. On August 16, 2022, defendants are scheduled to depose Dr. Kucsma. On August 19, 2022, plaintiff is scheduled to depose John Monaghan. On August 23, 2022, defendants are scheduled to depose Dr. Fraser. On August 30, 2022, defendants are scheduled to depose Jeffrey Noble. While plaintiff's counsel will not consent to any deadline extension, plaintiff's counsel has agreed to these scheduled expert deposition dates.

On *Jackson*, plaintiff's counsel has identified the following experts: 1) Dr. Jennifer Dysart; 2) Jeffrey Noble; 3) Dr. Michael Fraser; 4) Dr. Kristin Kucsma; and 5) Dr. Hayley Cleary – false confessions expert. Defendants have identified the following rebuttal experts: 1) Dr. Bruce Frumkin; and 2) John Monaghan. On August 8, 2022, plaintiff's counsel deposed Dr. Frumkin.

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On consent of all counsel, we have worked out an expert deposition schedule with Dr. Kucsma's deposition on August 16, 2022, John Monaghan's deposition on August 17, 2022, Dr. Cleary's deposition on August 18, Jeffrey Noble's deposition on August 22, 2022 and Dr. Fraser's deposition on August 23, 2022.

Under the current scheduling order, the first step in summary judgment motion practice is to be completed by September 2, 2022. As previously relayed, both the County defendants and Hempstead defendants intend to file motions for summary judgment. Per a review of Judge Donnelly's Part Rules, "[b]efore any party moves for summary judgment, the party must send their opponent a 56.1 statement of undisputed fact. After their opponent responds with a 56.1 counter statement, the party may move for a pre-motion conference in advance of a motion for summary judgment. The movant should file a letter, not to exceed 3 pages, explaining the basis for its motion and attaching both parties' 56.1 statements." *See* Judge Donnelly Individual Practice and Rules 4(B)(i), p. 4. Given these rules, and with the last expert deposition currently scheduled pending this Court's approval for August 30, 2022, it will be impossible to conduct any post deposition discovery based on the testimony of the experts. It will also be impossible to retrieve a final transcript of all of the expert depositions taken and include any excerpts in the parties Rule 56.1 statement or counter statement before the current September 2, 2022 deadline, or to even have each expert review their transcript and file an errata sheet within 30 days if changes are necessary.

Finally, plaintiff will not suffer any prejudice from the extension sought in this application. The requested adjournment would extend the deadline to take the first step in the summary judgment motion practice to September 30, 2022, with both Defendants intending to file motions for summary judgment. Given the overall schedule of the case, including the appropriate time to fully brief and decide the summary judgment motion, the limited extension sought in the instant application will not prejudice plaintiff.

Accordingly, the County Defendants respectfully request that the time to complete expert depositions be extended to August 30, 2022 and the time to take the first step in the summary judgment process be extended to September 30, 2022.

Respectfully submitted,

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP



John A. Vitagliano

Cc: Counsel of Record (via ECF)